



ENVIRONMENTAL LAW & POLICY CENTER
Protecting the Midwest's Environment and Natural Heritage

12 February 2009

Sent via USPS and email to LVOSS@idem.IN.gov

Indiana Department of Environmental Management
Office of Water Quality - NPDES Permits
Attn: Leigh Voss
100 N. Senate Avenue, Mail Code 65-42
Indianapolis, IN 46204

Re: NPDES Permit No. IN0025135

Dear Ms. Voss,

The Hoosier Chapter of the Sierra Club and the Environmental Law and Policy Center of the Midwest submit the following comment in response to the public notice of the Draft Modification of NPDES Permit No. IN0025135 for the City of Austin Wastewater Treatment Plant (the facility). Our organizations have members who use the water bodies that receive pollutants that will be discharged under this permit.

This permit modification proposes to increase discharge at the facility from 1.0 MGD to 2.0 MGD, and would allow twice the pollutant loading for CBOD, TSS and Ammonia-Nitrogen than the 2005 permit allows. This increased discharge of pollutants triggers the need for an antidegradation analysis under 327 IAC 2-1-2. This rule requires that "All waters whose existing quality exceeds the standards established herein as of February 17, 1977, shall be maintained in their present high quality **unless and until it is affirmatively demonstrated to the commissioner that limited degradation of such waters is justifiable on the basis of necessary economic or social factors** and will not interfere with or become injurious to any beneficial uses made of, or presently possible, in such waters." 327 IAC 2-1-2 (2) (emphasis added).

No antidegradation analysis appears to have been included with the public notice. Before this permit may be issued the applicant must demonstrate the necessity of increased pollutant loading, not only of the CBOD, TSS and ammonia in the permit, but also of phosphorus, which has not yet been addressed in the permit. The question a proper antidegradation analysis seeks to answer is not whether the *project* is justifiable, rather whether the *water quality degradation* is justifiable when weighed against alternatives that would degrade the water less or not degrade it at all. The alternatives that must be considered include available treatment technology and other strategies that would reduce the pollutant loading of CBOD, TSS, ammonia and phosphorus into this watershed. In order for the permit to be issued as it currently stands, the applicant must

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affirmatively demonstrate that the choice not to include increased treatment for these pollutants is justifiable on the basis of necessary economic or social factors. Simply stating that the treatment would cost more does not meet the burden of an antidegradation demonstration.

The need to limit the loading of these pollutants is especially significant because there are impairments already documented in the Stucker Fork (WL McClain Ditch), downstream from Hutto Creek. In the 2008 303(d) list of impaired waters in Indiana, IDEM identified impaired biotic communities, ammonia and dissolved oxygen as causes of impairment in Stucker Fork (WL McClain Ditch). Ammonia is a pollutant known to be discharged by this facility, and the link between phosphorus pollution and dissolved oxygen impairment is well-documented in many areas. Under 40 CFR 122.44(d) and 327 IAC 5-2-7 (a), IDEM may not issue a permit that would cause or contribute to a violation of water quality standards in any waterway. Permit limits must be set to the extent necessary to prevent such violations.

We are also concerned because this facility has been in violation of its permit limits every quarter since the existing permit was issued in 2005. As illustrated in the attached data from ICIS, permit violations have occurred for CBOD, TSS and ammonia-nitrogen, sometimes at levels that exceed permit limits by over 3300%. Many of these violations would exceed even the increased permit limits.

In addition to our comments above, we would like your response to the following questions:

- What analysis of alternatives to increased discharge has IDEM required of the permit applicant pursuant to an antidegradation analysis for 327 IAC 2-1-2 (2)?
- What alternatives to increased discharge of CBOD, TSS, ammonia-nitrogen and phosphorus have been considered by the permit applicant?
- Are freshwater mussels known to inhabit waters downstream of the facility?
- Has IDEM required the permit applicant to conduct a mussel survey to determine whether freshwater mussels are present in Hutto Creek or Stucker Fork (WL McClain Ditch)?
- Has algae overgrowth been reported in any waters downstream of the facility?
- What were the results of the WET tests required to be conducted in the first three months of the 2005 permit?
- How were the CBOD, TSS and ammonia-nitrogen limits in the permit originally derived? Are they technology-based effluent limits or water quality-based effluent limits?
- How has IDEM determined that increased discharges allowed by this permit modification will not cause or contribute to a violation of water quality standards (including criteria for CBOD, TSS and ammonia-nitrogen) in both Hutto Creek and Stucker Fork (WL McClain Ditch)?
- What analysis has IDEM required of the permit applicant to ensure that narrative standards found in 327 IAC 2-1-6 will not be violated by phosphorus pollution, both in Hutto Creek and waters downstream such as the Stucker Fork (WL McClain Ditch)?
- Is it IDEM's position that a phosphorus limit could not be included in a permit in order to meet narrative standards (e.g. to prevent discharges that "Are in concentrations or combinations that will cause or contribute to the growth of aquatic plants or algae to such degree as to create a nuisance, be unsightly, or otherwise impair the designated uses" 327 IAC 2-1-6 (a) (1) (D))?

- What analysis has IDEM required of the permit applicant to ensure that phosphorus reduction is not needed to protect downstream water uses, both in Hutto Creek and waters downstream such as the Stucker Fork (WL McClain Ditch) as required by 327 IAC 5-10-2 (a) (2) and 327 IAC 2-1-2 (2)?
- Does IDEM require documentation by a permit applicant that the discharge is greater than 40 miles upstream of a lake or reservoir, consistent with 327 IAC 5-10-2 (a) (1) (B) (ii)?
- How has the permit applicant demonstrated its ability to operate this facility in compliance with its NPDES permit, given its history of violations under the existing permit?
- What conditions has IDEM required to ensure that this facility will not continue to violate its NPDES permit limits?

We thank you for your careful consideration of our comments and questions.

Sincerely,



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/s/

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CC: Douglas Campbell, Mayor, City of Austin